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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CHERYL SAUER, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

SOLAREGE TECHNOLOGIES,
INC., and DOES 1-10 Inclusive,

Defendant.

Civil Case No.:5:22-cv-01584-JGB

CLASS ACTION

**FIRST AMENDED CLASS
ACTION COMPLAINT
AND
DEMAND FOR JURY TRIAL**

1 Plaintiff Cheryl Sauer (“Plaintiff”), individually and on behalf of all others
2 similarly situated, alleges the following:

3 **NATURE OF THE CASE**

4 **1.** This case arises out of the manufacture and sale of cellular plug-ins
5 for inverters by Defendant SolarEdge Technologies, Inc. (“Defendant” or “SE”).
6 The term “Cell Plug-Ins” or “Class Plug-Ins” includes, but is not limited to, models
7 CELL-A-R05-US-S-S2, CELL-A-R12-US-S-S2, and CELL-B-R05-US-S-S2 as set
8 forth in the “Cellular Plug-in with Data Plan for the US” sheet created by SE and
9 attached hereto as Exhibit A.

10 **2.** SE provides energy production monitoring through various apps as a
11 critical piece of the services provided by its inverters. These systems let a
12 consumer keep track of their home energy production in real-time. This
13 information is transmitted to the consumer via either wired plug-in, Wi-Fi plug-in,
14 or Cell Plug-In as is at issue here.

15 **3.** The Cell Plug-Ins were manufactured, designed, and sold to only
16 work on 3G wireless mobile networks. In 2018 and 2019, the wireless mobile
17 networks that provided the 3G networks that the Cell Plug-Ins accessed issued
18 notices that they would be sunseting 3G technology in 2022 (“the 3G Sunset”) and
19 all devices that used such 3G technology, such as the Cell Plug-Ins, would have to
20 be replaced.

21 **4.** In 2022, the Cell Plug-Ins ceased operating as designed because of the
22 3G Sunset and consumers, such as Plaintiff, lost access to solar monitoring
23 capabilities which are important and valuable to them.

24 **5.** A defect in the Cell Plug-Ins due to their reliance on 3G networks has
25 resulted in them to fail and be rendered useless. The Cell Plug-Ins cannot be
26 repaired; they must be removed and replaced.

27 **6.** SE was aware of this defect at the time of manufacture and aware that
28 the defect would manifest across all Cell Plug-Ins when the 3G Sunset happened

1 since at least August 2019, but continued selling inverters that included Cell Plug-
2 Ins.

3 7. Plaintiff seeks recovery on behalf of herself and all United States
4 residents who purchased Cell Plug-Ins or purchased properties on which the Cell
5 Plug-Ins were installed (the “Class” for breach of express and implied warranties
6 and for violations of the California consumer protection and unfair business
7 practice statutes.

8 **JURISDICTION & VENUE**

9 8. There is original federal subject matter jurisdiction over this matter
10 pursuant to the Class Action Fairness Act of 2005, Pub. L. 109-2, 119 Stat. 4 (Feb.
11 18, 2005), by virtue of 28 U.S.C. §1332(d)(2), which explicitly provides for the
12 original jurisdiction of federal courts in any class action in which at least 100
13 members are in the proposed plaintiff class, any member of the plaintiff class is a
14 citizen of a State different from the State of citizenship of any defendant, and the
15 matter in controversy exceeds the sum of \$5,000,000.00, exclusive of interests and
16 costs.

17 9. In the case at bar, there are at least 100 members in the proposed
18 Class, the total claims of the proposed Class members are in excess of
19 \$5,000,000.00 in the aggregate, exclusive of interests and costs, and Plaintiff seeks
20 to represent a California class of consumers, establishing minimum diversity.

21 10. There is also federal question jurisdiction because this case arises out
22 of a question of federal law, in particular the Magnuson-Moss Warranty Act, 15
23 U.S.C. § 2300 et. seq.

24 11. Venue is proper in the United States District Court for the Central
25 District of California pursuant to 28 U.S.C. § 1391(b)(1) because Defendant sold
26 and provided the Cell Plug-In to Plaintiff within this district.

27 **PARTIES**

28 12. Plaintiff, CHERYL SAUER (“Plaintiff”), is a resident of San

1 Bernardino, California. On September 10, 2019, Plaintiff purchased a solar system
2 which included two SE inverters and two Cell-Plugins for installation on her home.

3 13. Defendant SOLAREEDGE TECHNOLOGIES, INC., (“Defendant”) is
4 a corporation that does business in California, including within San Bernardino
5 County, and is incorporated in Delaware and headquartered in Milpitas, California.
6 Plaintiff is informed and believes and thereon alleges that SolarEdge Technologies
7 Ltd. is an Israeli subsidiary of SE and thus SE is responsible for warranties made
8 by SolarEdge Technologies Ltd..

9 14. The above-named Defendant, and its subsidiaries and agents, are
10 collectively referred to as “Defendants.” The true names and capacities of the
11 Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are
12 currently unknown to Plaintiff, who therefore sues such Defendants by fictitious
13 names. Each of the Defendants designated herein as a DOE is legally responsible
14 for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the
15 Complaint to reflect the true names and capacities of the DOE Defendants when
16 such identities become known.

17 15. Plaintiff is informed and believes that at all relevant times, each and
18 every Defendant was acting as an agent and/or employee of each of the other
19 Defendants and was acting within the course and scope of said agency and/or
20 employment with the full knowledge and consent of each of the other Defendants.
21 Plaintiff is informed and believes that each of the acts and/or omissions
22 complained of herein was made known to, and ratified by, each of the other
23 Defendants.

24 **FACTUAL ALLEGATIONS**

25 **SE’s Solar Inverters and Cell Plug-Ins**

26 16. Solar systems consist of a combination of solar panels, which generate
27 alternating current (AC) electricity, which connect to an inverter which converts
28 the electricity to direct current (DC) electricity which is then put directly into the

1 power grid or used by a house.

2 17. An inverter also includes additional functions, such as monitoring the
3 solar system and communicating with computer networks.

4 18. The communication with computer networks is done through either a
5 direct ethernet connection, a wireless connection, or a cellular connection, such as
6 that done by the Cell Plug-Ins.

7 19. The Cell Plug-Ins function by connecting to a 3G cellular wireless
8 network and communicating information from the inverter to a computer network
9 which then provides the information to consumers, such as Plaintiff, through either
10 an app or website.

11 20. The Cell Plug-Ins were designed and can only function by connecting
12 to a 3G cellular wireless network. Without a 3G cellular wireless network to
13 access, the Cell Plug-Ins are rendered useless and unable to perform their
14 fundamental purpose—the transfer of information regarding the system which
allows consumers to monitor their solar system.

15 21. This constitutes a defect in the Cell Plug-Ins and because of this
16 defect, all Cell Plug-Ins relevant to this litigation have now failed before the end of
17 their expected useful life as warranted by Defendant on either a five- or twelve-
18 year basis.

19 22. There is no way to repair the defect in the Cell Plug-Ins and restore
20 their functionality. The only means for addressing the failure of the Cell Plug-Ins is
21 to remove them and replace them with another type of plug-in.

22 **SE's Knowledge and Suppression of Warranty Claims**

23 23. SE has known since it first started manufacturing and selling the Cell
24 Plug-Ins that the plug-ins relied on 3G wireless networks and that the deprecation
25 of such networks would render the Cell Plug-Ins defective and useless.

26 24. SE has also known since at least August 2019 that the 3G wireless
27 networks its Cell Plug-Ins rely on would be deprecated in 2022, at which point the
28

1 Cell Plug-Ins would be rendered defective and useless.

2 25. SE issues an express Limited Product Warranty (“the Warranty”)
3 which covers “defects and materials of the below-listed products for the applicable
4 Warranty Period” with “products” including “Wireless Communication Products”
5 such as the Cell Plug-Ins. This express warranty as was in effective when Plaintiff
6 made her purchase is attached hereto as Exhibit B, however it is effectively the
7 same to SE’s “Limited Product Warranty” at all times.

8 26. With respect to the Cell Plug-Ins, the warranty covers 5 years from
9 either 4 months of the date of shipment or the date of installation, whichever is
10 earlier.

11 27. SE knew that the Cell Plug-Ins were covered under the warranty
12 claim, however preemptively sent out emails, including on January 27, 2022 as
13 attached as Exhibit C, advising consumers that it would not be honoring its
14 warranty with respect to Cell Plug-Ins and consumers would have to purchase and
15 install their own replacement plug-ins at significant cost.

16 28. SE also published and linked consumers to a FAQ, attached as Exhibit
17 D, on its website further reiterating that the “end user covers the cost” of
18 replacement and that it was not covered under its warranty.

19 29. SE’s affirmative actions to disclaim warranty coverage on the Cell
20 Plug-Ins despite the existence of such coverage was deliberate and unconscionable
21 and done by SE for purposes of not having to pay for the replacement of its Cell
22 Plug-Ins, which cost hundreds of dollars each.

23 **SE’s Warranty and Representations**

24 30. SE issued the Warranty for the Cell Plug-Ins which states that the Cell
25 Plug-Ins would be “cover[ed] [for] defects in workmanship and materials” for a
26 period of “5 years commencing on the earlier of [] 4 months from the date the
27 product is shipped from SolarEdge; and [] the installation of the product.” Exhibit
28 B.

1 31. The Warranty applies to both “the buyer who has purchased the
2 Products from an authorized seller of SolarEdge . . . and may be transferred from
3 buyer to any assignee, and will remain in effect for the time period remaining
4 under the foregoing warranties, *provided* that the Products are not moved outside
5 of its original country of installation and any reinstallation is done in accordance
6 with the installation directions and use guidelines accompany the Products.”
7 Plaintiff, as the purchaser of a Cell Plug-In from an authorized seller of SolarEdge,
8 was thus entitled to enforce the provisions of the Warranty.

9 32. The Warranty provides that in the event of a defect in workmanship or
10 materials, SE will either “repair the Product at SolarEdge’s facilities or on-site; or
11 issue a credit note for the defective Product in an amount up to its actual value at
12 the time buyer notifies SolarEdge of the defect, as determined by SolarEdge, for
13 use toward the purchase of a new Product; or provide Buyer with replacement units
14 for the Product.”

15 33. Because the Cell Plug-Ins at issue here no longer function at all, SE
16 cannot in fact replace or repair the Cell Plug-Ins. The only remedy would be to
17 install newly manufactured cellular plug-ins that work on new networks.
18 Accordingly, the remedies offered by the Warranty fail of their essential purpose,
19 i.e., to put the purchaser in the position he or she would have enjoyed but for the
20 breach of the Warranty. The only effective remedy for breach of the Warranty is to
21 remove the existing Cell Plug-Ins and replace them with newer models.

22 34. The Warranty purports to limit the rights and remedies of purchasers
23 of the Cell Plug-Ins, including, but not limited to:

24 A. “All costs, including, without limitation, labor, travel and boarding costs
25 of SolarEdge service personnel or others that are incurred for labor
26 relating to repairs, uninstalling and reinstalling of Products on-site, as
27 well as costs related to buyer’s employees and contractors repair or
28 replacement activities, are not covered by the Limited Warranty and,

1 unless otherwise agreed in writing in advance by SolarEdge, shall be
2 borne by the buyer.”

3 B. SE disclaims “ANY OTHER WARRANTIES WITH RESPECT TO
4 THE PRODUCTS PURCHASED BY BUYER FROM SOLAREEDGE,
5 WHETHER EXPRESS OR IMPLIED, WRITTEN OR ORAL
6 (INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR
7 FITNESS FOR A PARTICULAR PURPOSE).”

8 C. SE states that “SolarEdge’s sole obligation and buyer’s exclusive remedy
9 for any defect warranted hereunder is limited to those actions expressly
10 stated above.”

11 35. These purported limitations and exclusions (the “Exclusions”) are
12 unenforceable against Plaintiff and the Class. The Exclusions were not bargained
13 for by SE and its customers but were imposed unilaterally by SE. The Exclusions
14 are unfair because they are outside the reasonable expectations of the parties
15 thereto, deny consumers an effective remedy and purpose to limit the rights of
16 consumers in ways that are unenforceable under the Song-Beverly Consumer
Warranty Act and Magnuson-Moss Warranty Act.

17 36. The Exclusions’ limitation on SE’s liability solely to the cost of the
18 replacement of the Cell Plug-Ins and exclusion of any other damages or labor costs
19 is also unfair because the cost of installing the Cell Plug-In is a significant cost
20 potentially greater than the cost of the Cell Plug-In itself.

21 37. The unfairness of the Exclusions is also demonstrated by
22 unenforceable provisions of the Warranty that state it is the “exclusive remedy”
23 and the purported exclusion of implied warranties. Plaintiff and the Class have
24 substantial rights and remedies available for breach of implied and express
25 warranty due to the defective nature of the Cell Plug-Ins which SE cannot lawfully
26 preclude them from asserting.

27 38. Additionally, SE makes further representations in the product
28

1 datasheet (attached as Exhibit A) for the Cell Plug-Ins themselves and as noted in
2 the Warranty which advises that “[s]ome components may carry their own
3 manufacturer warranty. See product datasheet for more details.”

4 39. The product datasheet for the Cell Plug-Ins represents that the plug-
5 ins “[c]onnect[] SolarEdge inverters wirelessly to the internet,” “[e]nable[] remote
6 analysis and troubleshooting,” and a “5-year/12-year data plan is included.”

7 40. The datasheet also specifically makes the representation that “For 12
8 year data plans – in the event that third party cellular technology currently used by
9 SolarEdge [] is phased out or becomes otherwise unavailable, SolarEdge shall ship
10 replacement parts such as modem and/or sim card of a prevailing technology.
11 Upon such replacement, the new prevailing hardware shall continue to be covered
12 for the remainder of the original data plan duration.”

13 41. These representations and warranties were broadly disseminated on
14 SE’s website. These representations were false because the Cell Plug-Ins did not
15 provide remote analysis and troubleshooting for a period of 5-years or 12-years as
16 promised and also because SE refused to honor the specific representation made
17 that if the technology became deprecated it would replace it.

18 42. Purchasers of the Cell-Plugins as part of solar systems rely on
19 distributors, sellers, and installers of solar systems to advise them concerning the
20 advantages of purchasing solar systems and of the unique benefits of different
21 manufacturers, such as SE. Accordingly, SE knew that if it wanted to sell inverters
22 including Cell Plug-Ins to end users, it first had to convince distributors, sellers,
23 and installers to sell its products over competitors.

24 43. SE’s marketing plan for its products, including the Cell Plug-Ins,
25 relies almost exclusively on authorized distributors and sellers selling its products
26 to consumers, such as Plaintiff.

27 44. SE consistently marketed and promoted its app and website
28 monitoring system as enabled by the Cell Plug-Ins to distributors, sellers, and

1 installers who thereafter communicated this information to consumers, including
2 Plaintiff, as a reason to purchase a solar system including a SE inverter and Cell
3 Plug-In.

4 45. In 2019, as part of her purchase of her solar system, Plaintiff was
5 provided information about SE and its monitoring system as well as SE's warranty
6 with respect to the performance of its monitoring system.

7 46. If SE's authorized distributors, sellers, and installers had been made
8 aware of the falsity of SE's representations that the Cell Plug-Ins were free from
9 defects in materials and workmanship, would provide monitoring services for
10 between five and twelve years, and were covered under warranty, they would have
11 recommended that Plaintiff and the Class not purchase SE products including the
12 Cell Plug-Ins and instead select another inverter system. If the distributors, sellers,
13 and installers had recommended against purchasing SE's products including Cell
14 Plug-Ins, Plaintiff and the Class would not have purchased them. If members of the
15 Class had been aware from any source of these misrepresentations and omissions,
16 they would not have purchased products including the Cell Plug-Ins.

16 **Plaintiff's Individual Allegations**

17 47. On or about September 2019, Plaintiff began shopping for a solar
18 system for her home.

19 48. She ultimately decided to go with an authorized installer of SE
20 products who recommended a system consisting of 33 325 QCell panels hooked
21 into a SE StoreEdge 7600 Inverter, which is a combination battery and inverter,
22 and a SE 3800 HD Wave Inverter. Both inverters had Cell Plug-Ins.

23 49. The installer advised Plaintiff that, based on SE's representations, the
24 SE inverters would allow Plaintiff to monitor and troubleshoot her solar production
25 from an app or website offered by SE and that it included a cellular plan of
26 between five and twelve years along with a warranty.

27 50. Being able to monitor her solar system remotely was important to
28

1 Plaintiff and a key part of her decision with regards to which components to
2 include in her solar system.

3 51. Plaintiff relied on these representations and warranties in deciding to
4 purchase a solar system which included the Cell Plug-Ins. Had the authorized
5 installer or any other person informed Plaintiff that the Cell Plug-Ins were not
6 actually warranted to work and, in fact, would become useless within three (3)
7 years, she would not have agreed to purchase products including SE's Cell Plug-
8 Ins.

9 52. On September 10, 2021, Plaintiff executed her contract with the
10 authorized installer and agreed to purchase the solar system including the Cell
11 Plug-Ins for a net cost of \$36,876 after tax credit.

12 53. On or around January 27, 2022, Defendant sent Plaintiff an email
13 informing her that the Cell Plug-In component of her inverters would be rendered
14 inoperable by the deprecation of the 3G cellular networks, and that if the modem
15 was not replaced Plaintiff would no longer have access to her system monitoring.

16 54. Defendant also directed its sales agent, 365 Pronto, to begin
17 repeatedly emailing Plaintiff about purchasing a replacement plug-in which would
18 cost \$633 including parts and labor.

19 55. Because Defendant affirmatively disclaimed its Warranty through its
20 email and published FAQ (Exhibit D), Plaintiff felt that she had no choice except
21 to incur the parts and labor costs on her own to replace the defect Cell Plug-Ins.

22 56. Plaintiff was required to replace not one, but two Cell Plug-Ins, with
23 the first being in the panel inverter and the second being in the battery inverter.

24 57. As such, Plaintiff has incurred labor and parts costs to replace the two
25 Cell Plug-Ins modems in order to maintain her system monitoring plan, despite
26 Defendant's representations that the system monitoring plan would be provided for
27 a period of between five and twelve-years and also under a Warranty that covered
28 defects.

1 58. The failure of the Cell Plug-Ins due to a deprecation of the 3G
2 wireless network constitutes a defect which is a breach of the Warranty. On June 9,
3 2022, through her attorneys of record, Plaintiff notified SE by letter (Exhibit E) of
4 the breach of warranty and CLRA on behalf of herself and the Class and demanded
5 SE repair the defects and compensate Plaintiff and the Class for out-of-pocket
6 costs.

7 59. SE has failed to respond to this letter and thus refused to honor its
8 Warranty.

9 CLASS ALLEGATIONS

10 60. Plaintiff brings a Class claim pursuant to Fed. R. Civ. P. 23 on behalf
11 of herself and all others similarly situated members of the proposed Class defined
12 as follows:

13 All persons in the United States (a) who purchased the
14 Cell Plug-Ins from an authorized seller of SolarEdge or
15 (b) who currently own systems which include Cell Plug-
16 Ins.

17 61. Excluded from the Class are Defendant, any entity in which any
18 Defendant has a controlling interest, and Defendant's legal representatives, heirs
19 and successors, and any judge to whom any aspect of this case is assigned, and any
20 member of such a judge's immediate family.

21 62. Plaintiff also seeks to represent a Subclass consisting of all Class
22 Members within the State of California. Plaintiff reserves the right to modify or
23 amend the Class definition as appropriate.

24 63. Defendant, its employees, and agents are excluded from the Class.
25 Plaintiff does not know the number of members in The Class, but believes the
26 Class members number in the hundreds, if not more. Thus, this matter should be
27 certified as a Class Action to assist in the expeditious litigation of the matter.

28 64. The Class are so numerous that the individual joinder of all of its
members is impractical. While the exact number and identities of the Class

1 members are unknown to Plaintiff at this time and can only be ascertained through
2 appropriate discovery, Plaintiff is informed and believes and thereon alleges that
3 the Class includes tens of thousands of members. Plaintiff alleges that the Class
4 members may be ascertained by the records maintained by Defendant.

5 65. Plaintiff and members of the Class were harmed by the acts of
6 Defendant in at least the following ways: Defendant sold Cell Plug-Ins which were
7 represented to include a Warranty as well as a five or twelve-year cellular data plan
8 when in fact such Cell Plug-Ins became defective and useless following the
9 deprecation of the 3G wireless networks in 2022. This caused the Class members
10 to suffer a loss of value for their Cell Plug-Ins.

11 66. Common questions of fact and law exist as to all members of the
12 Class which predominate over any questions affecting only individual members of
13 the Class. These common legal and factual questions, which do not vary between
14 Class members, and which may be determined without reference to the individual
15 circumstances of any Class members, include, but are not limited to, the following:

- 16 (a) Whether Defendant violated California Bus. & Prof. Code §
17 17200, et seq. by, among other things, engaging in unfair, unlawful, or
18 fraudulent practices;
- 19 (b) Whether Defendant breached their implied warranties to
20 Plaintiff and the Class;
- 21 (c) Whether Defendant violated California Consumer Legal
22 Remedies Act, Cal. Civ. C. § 1750, et seq. by, misrepresenting the
23 nature or terms of its Cell Plug-Ins;
- 24 (d) Whether Defendant breached its express warranties to Plaintiff
25 and the Class;
- 26 (e) Whether Plaintiff and the Class are entitled to compensatory
27 damages, and the amount of such damages; and
- 28 (f) Whether Defendant should be declared financially responsible

1 for the costs and expenses of removal and replacement of all Cell
2 Plug-Ins as well as compensation for the lost monitoring ability during
3 the outage following the 3G Sunset.

4 67. As a person that purchased a system which included two Cell Plug-Ins
5 that became defective and needed replacement in 2022, Plaintiff is asserting claims
6 that are typical of the Class.

7 68. Plaintiff will fairly and adequately protect the interests of the
8 members of The Class. Plaintiff has retained attorneys experienced in the
9 prosecution of class actions.

10 69. A class action is superior to other available methods of fair and
11 efficient adjudication of this controversy, since individual litigation of the claims
12 of all Class members is impracticable. Even if every Class member could afford
13 individual litigation, the court system could not. It would be unduly burdensome
14 to the courts in which individual litigation of numerous issues would proceed.
15 Individualized litigation would also present the potential for varying, inconsistent,
16 or contradictory judgments and would magnify the delay and expense to all parties
17 and to the court system resulting from multiple trials of the same complex factual
18 issues. By contrast, the conduct of this action as a class action presents fewer
19 management difficulties, conserves the resources of the parties and of the court
20 system, and protects the rights of each Class member.

21 70. The prosecution of separate actions by individual Class members
22 would create a risk of adjudications with respect to them that would, as a practical
23 matter, be dispositive of the interests of the other Class members not parties to
24 such adjudications or that would substantially impair or impede the ability of such
25 non-party Class members to protect their interests.

26 71. Defendant has acted or refused to act in respects generally applicable
27 to The Class thereby making appropriate final and injunctive relief with regard to
28 the members of the Classes as a whole.

72. As a result of the facts alleged herein, Plaintiff and the Class have been damaged in an amount equal to the cost to replace and install new cellular plug-ins to replace the Cell Plug-Ins and render their systems operable. Additionally, the acts of SE in misrepresenting and omitting relevant facts concerning its Cell Plug-Ins and actively seeking to enforce the Exclusions and suppress claims through affirmative emails discouraging such claims were malicious in that they represent “despicable conduct” carried out by SE “with a willful and conscious disregard of the rights or safety of others”, oppressive conduct in that they represent “despicable conduct that subjects a person to a cruel and unjust hardship in conscious disregard of that person’s right,” and fraudulent conduct. Accordingly, Plaintiff and the Class are entitled to punitive damages according to proof.

COUNT I

Violation of Unfair Business Practices Act **(Cal. Bus. & Prof. Code §§ 17200 et seq.)**

Individually, and on behalf of the Class

73. Plaintiff incorporates by reference each allegation set forth above. Actions for relief under the unfair competition law may be based on any business act or practice that is within the broad definition of the UCL. Such violations of the UCL occur as a result of unlawful, unfair or fraudulent business acts and practices. A plaintiff is required to provide evidence of a causal connection between a defendants' business practices and the alleged harm--that is, evidence that the defendants' conduct caused or was likely to cause substantial injury. It is insufficient for a plaintiff to show merely that the Defendant’s conduct created a risk of harm. Furthermore, the "act or practice" aspect of the statutory definition of unfair competition covers any single act of misconduct, as well as ongoing misconduct.

UNFAIR

1 74. California Business & Professions Code § 17200 prohibits any “unfair
2 . . business act or practice.” Defendant’s acts, omissions, misrepresentations, and
3 practices as alleged herein also constitute “unfair” business acts and practices
4 within the meaning of the UCL in that its conduct is substantially injurious to
5 consumers, offends public policy, and is immoral, unethical, oppressive, and
6 unscrupulous as the gravity of the conduct outweighs any alleged benefits
7 attributable to such conduct. There were reasonably available alternatives to
8 further Defendant’s legitimate business interests, other than the conduct described
9 herein. Plaintiff reserves the right to allege further conduct which constitutes other
10 unfair business acts or practices. Such conduct is ongoing and continues to this
11 date.

12 75. In order to satisfy the “unfair” prong of the UCL, a consumer must
13 show that the injury: (1) is substantial; (2) is not outweighed by any countervailing
14 benefits to consumers or competition; and, (3) is not one that consumers
15 themselves could reasonably have avoided.

16 76. Here, Defendant’s conduct has caused and continues to cause
17 substantial injury to Plaintiff and members of the Class. Plaintiff and members of
18 the Class have suffered injury in fact due to Defendant’s decision to refuse to
19 honor its Warranty and representations with regards to the Cell Plug-Ins and
20 affirmative actions to attempt to suppress the submission of such claims, including
21 by seeking to enforce the Exclusions. Thus, Defendant’s conduct has caused
22 substantial injury to Plaintiff and the members of the Class.

23 77. Moreover, Defendant’s conduct as alleged herein solely benefits
24 Defendant while providing no benefit of any kind to any consumer. Such
25 deception utilized by Defendant convinced Plaintiff and members of the Class that
26 the Cell Plug-Ins were not covered by Warranty and thus they would need to pay in
27 excess of \$500 out of pocket to replace these products that Defendant actually had
28 an obligation to replace. Further, despite knowing in 2018 that its Cell Plug-Ins

1 would become defective within the minimum five (5) year cellular plans it sold for
2 the Cell Plug-Ins when the 3G networks were deprecated in 2022, Defendant
3 continued to manufacture and sell, through its authorized resellers and installers,
4 Cell Plug-Ins. Defendant unfairly profited by refusing to pay the costs it was
5 required to pay under a warranty and instead foisting those costs onto Plaintiff and
6 the Class. Thus, the injury suffered by Plaintiff and the members of the Class is not
7 outweighed by any countervailing benefits to consumers.

8 78. Finally, the injury suffered by Plaintiff and members of the Class is
9 not an injury that these consumers could reasonably have avoided. Defendant did
10 not represent or advise consumers that the Cell Plug-Ins would become defective
11 in 2022 until January 2022 at which point they had been paid for and installed. As
12 such, Defendant took advantage of Defendant's position of perceived power in
13 order to deceive Plaintiff and the Class members to purchase Cell Plug-Ins which
14 were represented to have features and warranties which SE knew it would not
15 honor. Therefore, the injury suffered by Plaintiff and members of the Class is not
16 an injury which these consumers could reasonably have avoided.

17 79. Thus, Defendant's conduct has violated the "unfair" prong of
18 California Business & Professions Code § 17200.

FRAUDULENT

19 80. California Business & Professions Code § 17200 prohibits any
20 "fraudulent ... business act or practice." In order to prevail under the "fraudulent"
21 prong of the UCL, a consumer must allege that the fraudulent business practice
22 was likely to deceive members of the public.

23 81. The test for "fraud" as contemplated by California Business and
24 Professions Code § 17200 is whether the public is likely to be deceived. Unlike
25 common law fraud, a § 17200 violation can be established even if no one was
26 actually deceived, relied upon the fraudulent practice, or sustained any damage.

27 82. Here, not only were Plaintiff and the Class members likely to be
28

1 deceived, but these consumers were actually deceived by Defendant. Such
2 deception is evidenced by the fact that Plaintiff agreed to purchase a solar system
3 including two SE inverters and Cell Plug-Ins with the understanding that such Cell
4 Plug-Ins came with a data plan of between five and twelve years as well as a
5 warranty that would cover defects. This was in fact false, because the Cell Plug-Ins
6 became defective in 2022 as planned and SE refused to repair them. Plaintiff's
7 reliance upon Defendant's deceptive statements is reasonable due to the unequal
8 bargaining powers of Defendant and Plaintiff. For the same reason, it is likely that
9 Defendant's fraudulent business practice would deceive other members of the
10 public.

11 83. Thus, Defendant's conduct has violated the "fraudulent" prong of
12 California Business & Professions Code § 17200.

13 **UNLAWFUL**

14 84. California Business and Professions Code Section 17200, et seq.
15 prohibits "any unlawful...business act or practice."

16 85. SE's conduct was unlawful because it violated the Consumer Legal
17 Remedies Act, Magnuson-Moss Warranty Act, and Song-Beverly Consumer
18 Warranty Act as set forth herein.

19 86. Defendant has thus engaged in unlawful, unfair, and fraudulent
20 business acts entitling Plaintiffs and Classes Members to judgment and equitable
21 relief against Defendant, as set forth in the Prayer for Relief. Additionally,
22 pursuant to Business and Professions Code section 17203, Plaintiff and Class
23 Members seek an order requiring Defendant to immediately cease such acts of
24 unlawful, unfair, and fraudulent business practices and requiring Defendant to
25 correct its actions.

26 **COUNT II**

27 **Violation of the California Consumer Legal Remedies Act**

28 **(Cal. Civ. C. § 1750 et seq.)**

Individually, and on behalf of the Class

87. Plaintiff incorporates by reference each allegation set forth in the preceding paragraphs.

88. The defect alleged herein is detailed at Paragraphs 1 through 6 and 20 through 22. SE's knowledge and concealment of the defect is detailed at paragraphs 23 through 24. SE's representations concerning its Cell Plug-Ins and the falsity of those representations is detailed at paragraphs 25 through 26 and 38 through 41. SE's dissemination of its misrepresentations and its effects through its distributors, sellers, and installers to induce adverse reliance by consumers on those representations and omissions is detailed at paragraphs 42 through 46 and 48 through 52. SE's refusal to remedy the problem is addressed at paragraphs 53 through 59. The Exclusions and their unfairness is detailed at paragraphs 30 through 37. SE's attempts to affirmatively disclaim and suppress warranty claims is detailed at paragraphs 27 through 29 and 77 through 78.

89. The Cell Plug-Ins are "goods" as defined by Cal. Civ. C. § 1761(a).

90. Defendant SE is a "person" as defined by Cal. Civ. C. § 1761(c).

91. Plaintiff and members of the Class are "consumers" as defined by Cal. Civ. C. § 1761(d) who purchased the Cell Plug-Ins for personal, family, and household purposes.

92. The purchase by Plaintiff and members of the Class of the Cell Plug-Ins are "transactions" as defined by Cal. Civ. C. § 1761(e).

93. Under the Consumer Legal Remedies Act, Cal. Civ. C. § 1770 et. seq., the following methods of competition are unlawful when any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumers:

- a. Representation that goods or services of a particular standard, quality, or grade, or that goods are of a particular style of model, if they are of another. Cal. Civ. C. § 1770(7).

- b. Representing that a transaction confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law. Cal. Civ. C. § 1770(14):
- c. Representing that the subject of a transaction has been supplied in accordance with a previous representation when it has not. Cal. Civ. C. § 1770(16).
- d. Inserting an unconscionable provision in a contract. Cal. Civ. C. § 1770(19)

94. SE violated Cal. Civ. C. § 1770(a)(7), (14), and (16) when it represented that the Cell Plug-Ins had certain characteristics regarding their length of use when they did not. These representations were disseminated as detailed in paragraphs 42 through 26, 48 through 52, 27 through 29, and 77 through 78. SE violated Cal. Civ. C. § 1770(a)(14), (16), and (19) when it represented that the Cell Plug-Ins came with a warranty that would cover the defect presented and by including unconscionable Exclusions as set forth in paragraphs 30 through 37.

95. Plaintiff served SE with notice of its violations of the CLRA pursuant to Cal. Civ. C. § 1782 by certified mail on June 9, 2022, attached as Exhibit E. Defendant SE failed to provide or offer to provide remedies for its violations of the CLRA within 30 days of the date of the notice.

COUNT III

Breach of Express Warranty

Individually, and on behalf of the Class

96. Plaintiff incorporates by reference each allegation set forth in the preceding paragraphs.

97. SE made the warranties described in the Warranty and Exhibit A.

98. SE is not entitled to enforce the Exclusions described in paragraphs 30 through 37 because they are unconscionable and violate the provisions of the Song-Beverly Consumer Warranty Act and the Magnuson-Moss Warranty Act.

1 99. Because the Cell Plug-Ins have failed within their expected useful life,
2 SE is in breach of its Warranty and representations made in Exhibit A.

3 100. As detailed above, SE has failed to remedy the breach of the
4 warranties for either Plaintiff or the Class.

5 101. Although Plaintiff does not believe that notice to SE of its breaches of
6 warranty are required under applicable law, Plaintiff has provided notice of its
7 breached of the warranties individually and on behalf of the Class at Exhibit E.

8 102. Further notice to SE of its breach of the warranties would be futile
9 because SE is aware of and has acknowledge the defects in the Cell Plug-Ins but
10 has affirmatively set forth that it will not honor its warranty with respect to the Cell
11 Plug-Ins.

12 103. As a result of SE's breach of the Warranty and warranties, Plaintiff
13 and the Class have suffered damages in an amount to be proven at trial.

14 **COUNT IV**

15 **Breach of Express Warranty – Magnuson-Moss Warranty Act** 16 **(Magnuson-Moss Warranty Act, 15 U.S.C. § 2300 et. seq.)**

17 *Individually, and on behalf of the Class*

18 104. Plaintiff incorporates by reference each allegation set forth in the
19 preceding paragraphs.

20 105. The Cell Plug-Ins are a consumer product as defined in 15 U.S.C. §
21 2301(1).

22 106. Plaintiff and the members of the Class are consumers as defined in 15
23 U.S.C. § 2301(3).

24 107. SE is a supplier and warranty as defined in 15 U.S.C. § 2301(4) & (5).

25 108. The Warranty contains "written warranties" within the meaning of 15
26 U.S.C. § 2301(6).

27 109. As alleged above, SE has breached the Warranty.

28 110. Additionally, pursuant to 15 U.S.C. § 2304(d)(1), SE may not assess

1 Plaintiff or the Class any costs the warrantor or his representatives occur in
2 connection with the required remedy of a warranted product because “if any
3 incidental expenses are incurred because the remedy is not made within a
4 reasonable time or because the warrantor imposed an unreasonable duty upon the
5 consumer as a condition of securing remedy, then the consumer shall be entitled to
6 recover reasonable incidental expenses which are so incurred in any action against
7 the warrantor.” SE has refused to pay all costs associated with the removal and
8 replacement of the Cell Plug-Ins.

9 111. Plaintiff has provided SE with notice of breach of the Warranty and a
10 reasonable opportunity to cure the breach. In addition, the notice afforded SE
11 notice on behalf of the Class of its breach of the Warranty and a reasonable
12 opportunity to remedy the breach. SE has failed to remedy the breach of its
13 obligations to the Class under the Warranty.

14 112. Further notice to SE of its breach of the warranties would be futile
15 because SE is aware of and has acknowledge the defects in the Cell Plug-Ins but
16 has affirmatively set forth that it will not honor its warranty with respect to the Cell
17 Plug-Ins.

18 113. As a result of SE’s breach of the Warranty and warranties, Plaintiff
19 and the Class have suffered damages in an amount to be proven at trial.

20 **COUNT V**

21 **Breach of Express Warranty – Song-Beverly Warranty Act**

22 **(Cal. Civ. C. § 1792 et. seq.)**

23 *Individually, and on behalf of the Subclass*

24 114. Plaintiff incorporates by reference each allegation set forth in the
25 preceding paragraphs.

26 115. The Cell Plug-Ins are consumer product as defined in California’s
27 Song-Beverly Consumer Warranty Act.

28 116. SE is a “manufacturer” within the meaning of the statute.

1 117. Plaintiff and members of the Subclass purchased Cell Plug-Ins within
2 the State of California.

3 118. As alleged above, SE breached the Warranty.

4 119. Plaintiff has provided SE with notice of breach of the Warranty and a
5 reasonable opportunity to cure the breach. In addition, the notice afforded SE
6 notice on behalf of the Subclass of its breach of the Warranty and a reasonable
7 opportunity to remedy the breach. SE has failed to remedy the breach of its
8 obligations to the Subclass under the Warranty.

9 120. Further notice to SE of its breach of the warranties would be futile
10 because SE is aware of and has acknowledge the defects in the Cell Plug-Ins but
11 has affirmatively set forth that it will not honor its warranty with respect to the Cell
12 Plug-Ins.

13 121. As a result of SE's breach of the Warranty and warranties, Plaintiff
14 and the Subclass have suffered damages in an amount to be proven at trial.

15 **COUNT VI**

16 **Breach of Implied Warranty**

17 *Individually, and on behalf of the Class*

18 122. Plaintiff incorporates by reference each allegation set forth in the
19 preceding paragraphs.

20 123. The sale by SE of the Cell Plug-Ins was accompanied by implied
21 warranties that the Cell Plug-Ins were merchantable and fit for the ordinary
22 purpose for which such products were sold (the "Implied Warranties").

23 124. SE issued the Warranty to Plaintiff and the Class. SE is therefore in
24 direct privity with Plaintiff and all members of the Class.

25 125. Further, the Implied Warranties incorporated into the transaction
26 between SE and its immediate purchasers, including authorized sellers and
27 installers (the "SE Vendors") were intended solely to benefit Plaintiff and the
28 Class. Plaintiff and the Class are therefore entitled to enforce the Implied

1 Warranties against SE.

2 126. This intent is evidence by the fact that the written Warranty issued by
3 SE not only extends to ender users but to their successors. Further, the Implied
4 Warranties made by SE to the SE Vendors would be of no economic value to the
5 SE Vendors unless Plaintiff and the Class received the benefits of such warranties.
6 The SE Vendors are not users of the Cell Plug-Ins. The economic benefit of
7 implied warranties made by SE to the SE Vendors depends on the ability of end
8 users who buy their products to obtain redress from SE if the warranties are
9 breached.

10 127. Under *Gilbert Financial Corp. v. Steelform Contracting Co.*, 82 Cal.
11 App. 3d 65 (1978), the Implied Warranties made by SE to the SE Vendors are
12 enforceable whether or not Plaintiff or the Class were in privity of contract with
13 SE.

14 128. SE breached the Implies Warranties in that the Cell Plug-Ins are not
15 fit for their intended use and not of merchantable quality because they have been
16 rendered defective and inoperable because of the 3G Sunset.

17 129. Although Plaintiff does not believe that notice to SE of its breaches of
18 warranty are required under applicable law, Plaintiff has provided SE with notice
19 of breach of the Warranty and a reasonable opportunity to cure the breach. In
20 addition, the notice afforded SE notice on behalf of the Class of its breach of the
21 Warranty and a reasonable opportunity to remedy the breach. SE has failed to
22 remedy the breach of its obligations to the Class under the Warranty.

23 130. Further notice to SE of its breach of the warranties would be futile
24 because SE is aware of and has acknowledge the defects in the Cell Plug-Ins but
25 has affirmatively set forth that it will not honor its warranty with respect to the Cell
26 Plug-Ins.

27 131. As a result of SE's breach of the Implied Warranties, Plaintiff and the
28 Class have suffered damages in an amount to be proven at trial.

COUNT VII

Breach of Implied Warranty – Magnuson-Moss Warranty Act
(Magnuson-Moss Warranty Act, 15 U.S.C. § 2300 et. seq.)

Individually, and on behalf of the Class

132. Plaintiff incorporates by reference each allegation set forth in the preceding paragraphs.

133. The Cell Plug-Ins are a consumer product as defined in 15 U.S.C. § 2301(1).

134. Plaintiff and the members of the Class are consumers as defined in 15 U.S.C. § 2301(3).

135. SE is a supplier and warranty as defined in 15 U.S.C. § 2301(4) & (5).

136. Under 15 U.S.C. § 2301(7), SE extended the Implied Warranties to Plaintiff and the Class.

137. Defendant breached the Implied Warranties by selling Cell Plug-Ins that were neither merchantable nor fit for their intended purpose.

138. Under 15 U.S.C. § 2310(e), notice of breach of warranty need not be provided until after Plaintiff has been appointed Class Representative.

139. Plaintiff has provided SE with notice of breach of the Warranty and a reasonable opportunity to cure the breach. In addition, the notice afforded SE notice on behalf of the Class of its breach of the Warranty and a reasonable opportunity to remedy the breach. SE has failed to remedy the breach of its obligations to the Class under the Warranty.

140. Further notice to SE of its breach of the warranties would be futile because SE is aware of and has acknowledge the defects in the Cell Plug-Ins but has affirmatively set forth that it will not honor its warranty with respect to the Cell Plug-Ins.

141. As a result of SE's breach of the Implied Warranties, Plaintiff and the Class have suffered damages in an amount to be proven at trial.

COUNT VIII

Breach of Implied Warranty – Song-Beverly Warranty Act

(Cal. Civ. C. § 1792 et. seq.)

Individually, and on behalf of the Subclass

142. Plaintiff incorporates by reference each allegation set forth in the preceding paragraphs.

143. Under the Song-Beverly Consumer Warranty Act, every sale of consumer goods in the State of California is accompanied by a manufacturer’s implied warranty that the goods are merchantable.

144. The Cell Plug-Ins are consumer goods within the meaning of the statute.

145. Defendant SE is a “manufacturer” within the meaning of the statute.

146. Plaintiff and members of the Subclass purchased Cell Plug-Ins within the State of California.

147. By operation of law, Defendant made Implied Warranties to Plaintiff and the Class concerning the Cell Plug-Ins.

148. Defendant breached those Implied Warranties by selling Cell Plug-Ins which were not of merchantable quality and failed to perform the tasks for which they were intended.

149. Plaintiff and the Subclass do not have to be in privity because they are intended beneficiaries of the Implied Warranties between SE and SE Vendors as set forth above and therefore are entitled to enforce the Implied Warranties against SE.

150. Plaintiff has provided SE with notice of breach of the Warranty and a reasonable opportunity to cure the breach. In addition, the notice afforded SE notice on behalf of the Class of its breach of the Warranty and a reasonable opportunity to remedy the breach. SE has failed to remedy the breach of its obligations to the Class under the Warranty.

1 151. Further notice to SE of its breach of the warranties would be futile
2 because SE is aware of and has acknowledge the defects in the Cell Plug-Ins but
3 has affirmatively set forth that it will not honor its warranty with respect to the Cell
4 Plug-Ins.

5 152. As a result of SE's breach of the Implied Warranties, Plaintiff and the
6 Subclass have suffered damages in an amount to be proven at trial.

7 **MISCELLANEOUS**

8 153. Plaintiff and Class Members allege that they have fully complied with
9 all contractual and other legal obligations and fully complied with all conditions
10 precedent to bringing this action or that all such obligations or conditions are
11 excused.

12 **PRAYER FOR RELIEF**

13 **WHEREFORE**, Plaintiff and members of the Class and Subclass respectfully
14 pray for the following relief:

- 15 a. An order certifying the Class under Fed. R. Civ. P. 23 and appointing
16 Plaintiff as Representative of the Class and Subclass;
- 17 b. An order certifying the undersigned counsel as Class Counsel;
- 18 c. An order requiring Defendant, at its own cost, to notify all Class
19 Members of the fraudulent and deceptive conduct herein;
- 20 d. An injunction enjoining SE from enforcing, threatening to enforce or
21 claiming the right to enforce any of the Exclusions;
- 22 e. Actual damages suffered by Plaintiff and Class and Subclass Members
23 as applicable or full restitution;
- 24 f. Any and all statutory enhanced damages;
- 25 g. For exemplary and punitive damages according to proof;
- 26 h. All reasonable and necessary attorneys' fees and costs provided by
27 statute, common law or the Court's inherent power;
- 28 i. Pre- and post-judgment interest; and

1 j. All other relief, general or special, legal and equitable, to which
2 Plaintiff and Class Members may be justly entitled as deemed by the Court.

3
4 **DEMAND FOR JURY TRIAL**

5 Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff, on
6 behalf of herself and all others similarly situated, demands a trial by jury on all
7 questions of fact raised by the Complaint.

8 Dated: October 21, 2022 Respectfully submitted,

9
10 LAW OFFICES OF TODD M. FRIEDMAN , PC

11
12 By: /s/ Todd M. Friedman

13 TODD M. FRIEDMAN, ESQ.

14 *Attorneys for Plaintiff*
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1 Filed electronically on this 21st Day of October, 2022, with:

2 United States District Court CM/ECF system.

3 Notification sent electronically on this 21st Day of October, 2022, to:

4 Honorable Jesus G. Bernal

5 United States District Court

6 Central District of California

7 And All Counsel of Record as Recorded On The Electronic Service List

8
9 /s/ Todd M. Friedman, Esq.

10 TODD M. FRIEDMAN